RAJA ABDULLAH WAHMAN RAJA SULAIMAN & ANOR

v.

TOPLINK TECHNOLOGIES SDN BHD

HIGH COURT, MALAYA KUALA LUMPUR
ABDUL MALIK ISHAK J
[CIVIL SUIT NO: S5-22-402-2000]
2 JANUARY 2003

CIVIL PROCEDURE: *Costs - Interest on costs - Whether entitled - Calculation of interest - Whether to start from date of judgment - Rules of the High Court 1980, O. 42 r. 12*

The plaintiff was directed to pay costs to the defendant by the civil court which the plaintiff did by way of a cheque. Defendant contended that the payment was made without interest. Conceding that there was an interest leviable on costs, the issue was whether the interest payable should start from the date of the order or from the date of taxation.

Held:

[1] A litigant who has been awarded costs was entitled to interest on those costs from the date of judgment rather than from the date when the taxation of costs was completed. Thus the interest was to be calculated from the date of the judgment till the date of realisation. (p 267 f-h)

[Parties confirmed payment rightfully made with interests on costs included].

Case(s) referred to:
Gooi Hock Seng v. Chuah Guat Khim [2001] 1 CLJ 583 ***(refd)***
Hunt v. RM Douglas (Roofing) Ltd [1988] 3 All ER 823 ***(refd)***
Liau Kim Lian v. Bajuria [1971] 1 MLJ 276 ***(refd)***
Re P Suppiah [1989] 2 MLJ 479 ***(refd)***
Sam Hock Ming v. Hong Leong Assurance Sdn Bhd [1359] MD 2 ***(refd)***
Sinnatamby Seahomes Sdn Bhd v. Perwira Habib Bank Malaysia Bhd [2001] 2 CLJ 299 ***(refd)***
The London, Chatham and Dover Railway Co v. The South Eastern Railway Co [1893] AC 429 ***(refd)***
Wong Chong Chow v. Pan-Malaysian Cement Works Bhd [1980] 2 MLJ 75 ***(refd)***

Legislation referred to:
Rules of the High Court 1980, O. 42 r. 12
Supreme Court Rules 1957, O. 40 r. 11(2)

For the plaintiff - Raja Nazrin Raja Ghazilla; M/s Ariffin & Thava
For the defendant - Marcelle Sinnappa; M/s Cheah Teh & Su

Reported by Suhainah Wahiduddin

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JUDGMENT

Abdul Malik Ishak J:

Background Facts

The plaintiff filed a suit against the defendant in the civil one court (hereinafter b referred to as the "S1 court") and since then the S1 court had struck off the suit and directed the plaintiff to pay costs to the defendant but alas, till today, costs have yet to be paid by the plaintiff to the defendant. The defendant was adamant that costs be paid by the plaintiff as ordered by the S1 court. The plaintiff through its learned counsel by the name of Raja Nazrin bin Raja c Ghazilla merely assured this court that costs would be paid by the plaintiff in due course. That was quite re-assuring but it was not enough to placate the defendant.

At the next court session, Raja Nazrin bin Raja Ghazilla informed this court that the plaintiff had paid the defendant by way of a cheque in the sum of d RM5,310. Miss Marcelle Sinnappa for the defendant confirmed receiving that cheque but she pointed out that the payment was made without interest. She stressed that the defendant was interested in obtaining the interest and she itemised the interest to be in the sum of RM929.34. Raja Nazrin bin Raja Ghazilla replied that there was no provision of interest in respect of costs and e he submitted that if interest was to be included it should be reflected in the allocatur. He pointed out that the allocatur which he received was only for the sum of RM3,817. Miss Marcelle Sinnappa submitted that costs should be tied up with interest.

f Raja Nazrin bin Raja Ghazilla responded for the plaintiff. It was his submission that the Rules of the High Court 1980 ("RHC") was totally silent in regard to interest leviable on costs unless interest was awarded during taxation. Here, according to him, interest was not awarded during taxation.

At the next session, Raja Nazrin bin Raja Ghazilla was wiser. He conceded g that there is an interest leviable on costs. But he asked as to when the interest should be payable. He posed the following question: is interest to start from the date of the order or from the date of taxation? He answered the question as posed by him in this way: that interest can only run from the date of taxation after the costs have been quantified. Miss Marcelle Sinnappa responded and h she submitted that interest ought to be computed from the date of judgment and not from the date of taxation.

Raja Nazrin bin Raja Ghazilla was not pleased. He was concerned about fairness. He submitted that the plaintiff could not be expected to pay interest on costs if the amount was not determined. And that, according to him, once i the amount was determined then that would be the date where the taxation

would come into the picture. He then submitted that, in our case, the interest itself had been paid and it was paid with effect from the date of the judgment and that payment had been made after the last session, subject to the decision of this court. Miss Marcelle Sinnappa confirmed that interest had been paid with effect from the date of the judgment after the last session.

Exposition Of The Law

It must be remembered that interest is usually awarded to the plaintiff not by way of compensation for the damage done but rather for being kept out of the money which, by right, ought to have been paid to him. This seems to be the views of Lord Herschell LC in *The London, Chatham and Dover Railway Co v. The South Eastern Railway Co* [1893] AC 429 at 437. And according to the case of *Wong Chong Chow v. Pan-Malaysian Cement Works Bhd* [1980] 2 MLJ 75 at 78 that interest would begin to accrue from the date of accrual of the cause of action. Again, on the authority of *Sinnatamby Seahomes Sdn Bhd v. Perwira Habib Bank Malaysia Bhd* [2001] 2 CLJ 299, the court may even award pre-judgment and post-judgment interests. It is interesting to note that interest is always payable where the court directs payment of costs to be taxed. In a situation where the court orders that damages to be assessed or where the court makes an order that costs to be taxed, such orders usually carry interest to be calculated from the date of the entry of the judgment and not from the date of assessment or from the date of taxation (*Liau Kim Lian v. Bajuria* [1971] 1 MLJ 276; and *Gooi Hock Seng v. Chuah Guat Khim, Pemegang harta pesaka bagi estet Chuah Teow Hock, simati* [2001] 1 CLJ 583). In *Liau Kim Lian v. Bajuria (supra)* the then Federal Court (Ong CJ (Malaya), Gill FJ and Raja Azlan Shah J) had to deal with the question of whether interest was chargeable on the amount of costs awarded against a party to an action where there has been delay in payment. In allowing the appeal, the then Federal Court held that upon a true construction of O. 40 r. 11(2) of the Supreme Court Rules 1957 interest was said to be payable where an order directed that payment of costs to be taxed. Gill FJ delivering the judgment of the then Federal Court had this to say at p. 277 of the report:

> The view which we took of the matter was that upon a true construction of O. 40 r. 11(2) interest is payable where an order directs payment of costs to be taxed. It is to be observed that O. 40 r. 11(2) speaks of 'every judgment for the payment of money'. The word 'judgment' is defined in section 2 of the Debtors Ordinance, 1957 to include 'any decree, order or decision for the payment of money'. Where there is an order for costs, it is enough if the amount of the costs is ascertained on the successful party's bill of costs being taxed by a proper officer of the court, as after taxation a further order for the payment is not necessary. Indeed, an order for payment of costs is tantamount to an order for the payment of such amount of money as may be ascertained on taxation to be the amount of the costs to which the successful

party is entitled. To a very large extent, it is similar to a judgment for damages to be assessed. A judgment for damages to be assessed, or for costs to be taxed, carries interest from the date of entry of judgment and not from the date of assessment or taxation (see *Halsbury's Laws of England*, 3rd edition, Vol. 22, page 782, paragraph 1662).

For reasons stated, we allowed this appeal but made no order as to costs. This meant that it would be open to the judgment creditor to enforce payment of the amount due as interest on costs, if he so wished.

Appeal allowed.

Abdul Malek Ahmad FCJ in *Gooi Hock Seng v. Chuah Guat Khim, Pemegang harta pesaka bagi estet Chuah Teow Hock, simati (supra)* was of the view that interest was leviable on the costs that was awarded. At p. 589 to p. 590 of the report, this was what his Lordship Abdul Malek Ahmad FCJ had to say:

However, as for the second item, which was the interest on costs, the learned Registrar had said that learned counsel for the applicant/respondent had not impressed her that the order of costs was a judgment debt under Order 42 r. 12 of the Rules, that the application for interest on costs cannot be made at the taxation proceedings as no costs are awarded at that stage, and that she was not bound by any other award of taxed costs.

In *Halsbury's Laws of England*, vol 37 at p. 581, para. 753 reads:

> Notwithstanding that orders for costs have the same effect as judgments and that judgment debts carry interest from the date of entering up the judgment, the modern practice, based on the principle that interest cannot run until payment is wrongfully withheld and that payment cannot be wrongfully withheld until a party knows what he has to pay, is that interest on costs runs from the date of the taxing officer's certificate quantifying the costs or from such other date as may be ordered as the date on which payment is to be made.

In *Liau Kim Lian v. Bajuria* [1971] 1 MLJ 276, the Federal Court had ruled that upon a true construction of Order 40 r. 11(2) of the Rules, interest is payable where an order directs payment of costs to be taxed, and a judgment for damages to be assessed, or for costs to be taxed, carries interest from the date of entry of judgment and not from the date of assessment or taxation.

This was followed by the High Court in *Sam Hock Ming v Hong Leong Assurance Sdn Bhd* Civil Suit No 23-113-86 High Court Ipoh which held that as to whether interest should run from the date when an order for costs was made or from the date of allocatur in respect of such costs, the court took the view that a judgment for damages to be assessed or for costs to be taxed, carried interest from the date of the said judgment and not from the date of assessment of damages or taxation of costs.

As stated in footnote 5 of the Halsbury's text referred earlier, *Pyman & Co v. Burt and Bolton* [1884] WN 100 and *Landowners' West of England and South Wales Land Drainage and Inclosure Co v. Ashford* [1884] 33 WR 41, were overruled by *K v. K* [1977] Fam 39; [1977] 1 All ER 576 CA and *Erven Warnink Besloten Vernootschap v. J Townsend & Sons (Hull) Ltd* [1981] 125 Sol Jo 427 but these in turn have now been overruled by *Hunt v. RM Douglas (Roofing) Ltd* [1988] 3 All ER 823 which held that a litigant who has been awarded costs is entitled to interest on those costs from the date of judgment rather than the date the taxation of costs is completed.

It is my considered opinion that interest on costs should have been ordered by the learned Registrar and I now order that the learned Registrar's certificate be amended to include a new item 99 to read as follows:

> 99. Interest on costs at 8 per cent per annum from the date of judgment of the appeal in the Federal Court on April 19, 1993 till the date of realisation.

Peh Swee Chin J (as he then was) in *Sam Hock Ming v. Hong Leong Assurance Sdn Bhd* [1359] MD 2 – a decision delivered on 19 June 1989, was of the view that "a judgment for damages to be assessed or for costs to be taxed, carried interest from the date of the said judgment and not from the date of assessment of damages or taxation of costs."

LC Vohrah J (as he then was) in *Re P Suppiah, (Tara Rajaratnam, Judgment Creditor)* [1989] 2 MLJ 479 referred to O. 42 r. 12 of the RHC and his Lordship vigorously applied that rule. That rule provides that interest is to be calculated from the date of judgment until the judgment is satisfied.

In *Hunt v. RM Douglas (Roofing) Ltd* [1988] 3 All ER 823, the House of Lords (Lord Bridge Of Harwich, Lord Brandon Of Oakbrook, Lord Griffiths, Lord Ackner and Lord Jauncey Of Tullichettle) held that a litigant who has been awarded costs was entitled to interest on those costs from the date of judgment rather than from the date when the taxation of costs was completed. Incidentally, *Hunt v. RM Douglas (Roofing) Ltd (supra)* was alluded to by Abdul Malek Ahmad FCJ in *Gooi Hock Seng v. Chuah Guat Khim, Pemegang harta pesaka bagi estet Chuah Teow Hock, simati (supra).*

Applying all these salient authorities to the factual matrix of the present case, it was part and parcel of my judgment that interest was to be calculated from the date of the judgment till the date of realisation and that payment had rightfully been made, according to Raja Nazrin bin Raja Ghazilla of counsel for the plaintiff and confirmed by Miss Marcelle Sinnappa of counsel for the defendant.